

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
MARSHALL DIVISION**

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|---|---|
| IMPLICIT, LLC,<br><i>Plaintiff,</i>         |   |
| v.  | Civil Action No. 2:18-cv-00053-JRG<br>LEAD CASE   |
| NETSCOUT SYSTEMS, INC.<br><i>Defendant.</i> | JURY TRIAL DEMANDED                               |
| v.  |   |
| SANDVINE CORPORATION.<br><i>Defendant.</i>  | Civil Action No. 2:18-cv-00054-JRG<br>MEMBER CASE |

**JOINT STIPULATION REGARDING CERTAIN AGREEMENTS ON**  
**MOTIONS *IN LIMINE***

Plaintiff Implicit, LLC (“Implicit”) and Defendants NetScout Systems Inc. (“NetScout”) and Sandvine Corporation (“Sandvine”) (collectively, the “Parties”) respectfully give notice that they have met and conferred and reached certain agreements regarding the Parties’ Motions *in Limine*, as outlined below.<sup>1</sup>

By entering into this stipulation, the parties do not waive any rights to object to the admission of any evidence for any reason and nothing herein shall be construed as an admission that any evidence is relevant or admissible.

**Agreements:**

1. The Parties have resolved Defendants’ Motion *in Limine* No. 6. Implicit will not offer, solicit, or refer to testimony, evidence, or argument of Defendants’ total revenue, profits, other than the apportioned and unapportioned royalty bases. However, Implicit may adduce offer, solicit, or refer to testimony, evidence, or argument, using relative terms, that sales of the accused products make up a large portion of each Defendants total or U.S. revenue or profits. Some non-limiting examples of such relative terms are, “nearly all,” “the majority,” “the vast majority,” “more than half,” “practically all,” “a significant portion,” etc. If Defendants’ question what such relative terms mean, Implicit’s witnesses will be permitted to respond with percentages.

2. The Parties have resolved Defendants’ Motion *in Limine* No. 7. No Party will put forth testimony or evidence regarding correspondence between counsel and third-party witnesses relating to the service of subpoenas, scheduling depositions, and producing documents in the case, with the exceptions of third-parties David Mosberger, Larry Peterson, and Dan Decasper.

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<sup>1</sup> NetScout and Sandvine are collectively referred to as “Defendants.”

3. The Parties have resolved Defendants' Motion in *Limine* No. 9. Neither party will put forth evidence or argument regarding any of the Court's rulings except for the applicable claim constructions.
4. Sandvine and Implicit have resolved Sandvine's Motion in *Limine* No. 13. Implicit will not offer or otherwise use the Sandvine declaration at ECF 18-2 as part of a direct examination during its opening case, but reserves the right to offer or otherwise use the declarations within the scope of any appropriate cross-examination or rebuttal, or to impeach; this reservation includes during any adverse direct if Implicit calls Sandvine's corporate representative(s) in its case in chief.
5. The Parties have reached Agreement on Implicit's Motion in *Limine* No. I. Neither Defendant will offer, solicit, or refer to testimony, evidence, or argument relating to the dispute between Implicit and R. Michael Crill.

Dated: November 8, 2019

By: /s/ Mark C. Lang

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Respectfully submitted,

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### **CERTIFICATE OF SERVICE**

The undersigned certifies that the foregoing document was filed electronically in compliance with Local Rule CV-5(a). As such, this motion was served on all counsel who have consented to electronic service, per Local Rule CV-5(a)(3), on this the 8th day of November, 2019.

/s/ Lynne Rose Maylath  
Lynne Rose Maylath